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Comments by the Office of the United Nations High Commissioner for Refugees on the draft comprehensive convention on international terrorism, circulated at the request of Belgium on behalf of the European Union

General comments

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) would welcome a comprehensive convention on international terrorism to the extent that the conclusion of such a convention would assist in the global struggle against terrorism, particularly through the identification and prosecution of persons guilty of terrorist acts.

2. At the same time, UNHCR would be seriously concerned if such a convention were to make an unwarranted linkage between refugees and terrorists. Terrorists are not, and by the terms of the definition of a refugee contained in the 1951 Convention relating to the Status of Refugees, should not be recognized and protected as refugees. The international refugee instruments, if properly applied, do not extend or afford any immunity from prosecution to those engaged in terrorist activities. These instruments, the 1951 Convention, its 1967 Protocol and the statute of UNHCR, are sufficient as they stand to ensure that terrorists are not protected as refugees, and any comprehensive convention on international terrorism should neither suggest nor be interpreted to provide otherwise.

Specific comments on selected articles

Article 7

3. Article 7 aims at ensuring that asylum is not granted to persons who have committed offences identified in the Convention. As note above, the international refugee instruments already have adequate provision for the exclusion from refugee protection of persons who commit such crimes. Such an article is therefore unnecessary here, and may lead to the erroneous and undesirable assumption of an

unwarranted linkage between asylum and terrorism. For this reason UNHCR would prefer its deletion. If nevertheless retained, this article should at a minimum make reference (as does, for example, Security Council resolution 1373 (2001)) to relevant provisions of national and international law, which would include international refugee law and international human rights law. This could be achieved by inserting in the first line of the article, after the words "appropriate measures", the following:

> "in conformity with the relevant provisions of national and international law, including international standards of human rights,"

Article 14

4. Article 14 removes the "political offence" exception to extradition for offences identified in this draft convention and in the 12 existing "terrorism" conventions listed in annex I. This confirms what has already been the trend in recently codified international instruments relating to terrorist acts, namely that political motivations would not as such prevent the extradition of suspected terrorists. *These instruments, however, also contain safeguards according to which extradition may be refused if the requested State believes that extradition could lead to return to persecution. Provided, therefore, that article 14 is interpreted in conjunction with the non-persecution safeguard addressed in article 15, this would be consistent with international refugee law.*

Article 15

5. In line with our remarks above on article 14, UNHCR welcomes the provision in article 15 for an exception for extradition requests where the requested State has substantial grounds for believing that the request might lead to prosecution or punishment on discriminatory grounds. However, *UNHCR believes that such an exception should be mandatory, as stipulated in the 1990 United Nations Model Treaty on Extradition under article 3 (mandatory grounds for refusal) and not optional, as is the case here. In addition, the provision should be strengthened by reference to the relevant international instruments, including those related to the prohibition on return to torture (as also foreseen in the Model Treaty on Extradition referred to above).* In addition, it would be desirable to include in article 15, as is done in article 14, a reference to annex I regarding other existing conventions.